



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) ITL.0438US (P9450)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>March 28, 2006</u> Signature <u>[Signature]</u> Typed or printed name <u>Jennifer Juarez</u>		Application Number 09/703,162	Filed October 31, 2000
		First Named Inventor Benjamin M. Cahill, III	
		Art Unit 2677	Examiner Abbas L. Abdulsalam
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. 42,117 Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<p><u>[Signature]</u> Signature Mark J. Rozman Typed or printed name 512/418-9944 Telephone number <u>3/28/06</u> Date</p>	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Benjamin M. Cahill, III	§	Group Art Unit:	2677
		§		
Serial No.:	09/703,162	§		
		§	Examiner:	Abbas L. Abdulsalam
Filed:	October 31, 2000	§		
		§		
For:	Analyzing Alpha Values	§	Atty. Dkt. No.:	ITL.0438US (P9450)
	For Flicker Filtering	§		

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

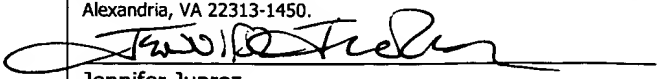
Applicant seeks pre-appeal review of the rejection of claims 1-15 and 17-22. It is respectfully submitted that the rejection to pending claims 1-15 and 17-22 is clearly erroneous and the burden of an appeal should be avoided.

Pending independent claims 1, 10, and 17 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,327,003 (Vos). The rejection is clearly erroneous as the cited reference nowhere teaches each and every element of these claims, in violation of well-established Patent Office policy. MPEP §2131. As to claim 1, nowhere does Vos teach either receipt of an alpha value indicative of how a video signal and a graphics signal are to be combined, or adjusting of a flicker filter based upon the alpha value. In this regard, the Examiner points to the components of FIG. 3 of Vos that merely show that an on screen display (OSD) generation interface 30 is connected to an on screen insertion interface 32 that also receives a video signal 36. Final Office Action mailed December 29, 2005, p. 2. However, nothing in Vos anywhere teaches receiving an alpha value.

Instead, as Vos teaches, the OSD provides information regarding an OSD header, a panel of colors and an address of a location in memory for the color: not an alpha value. Vos, col. 1, ln. 52 – col. 2, ln. 5; FIG. 1. Nowhere does Vos teach that either on screen display generation

Date of Deposit: March 28, 2006

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Jennifer Juarez

interface 30 or any other portion of the system of Vos provides an alpha value, either to the on screen insertion interface 32 or anywhere else, as described more fully in Applicant's Reply to Final Office Action Mailed December 29, 2005, ("Applicant's Reply"), p. 2.

Further, there is no teaching in Vos to adjust a flicker filter based upon such a (non-existent) alpha value. Instead, the mathematical filter disclosed in Vos is adapted to perform a particular equation and nowhere is it taught that this equation be adjusted, and it is certainly not adjusted based upon a non-existent alpha value, as described more fully in Applicant's Reply, pp. 2-3. Accordingly, the cited portions of Vos contended to meet the subject matter of claim 1 do not do so, and claims 1, 10, and 17 and their dependent claims are patentable.

Pending claims 2-9, 11-15 and 18-22 stand rejected under 35 U.S.C. § 103(a) over Vos in view of U.S. Patent No. 6,144,365 (Young). The rejection is clearly erroneous at least for the same reasons discussed above regarding claim 1 as "dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious." *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Further, Young is not analogous art with respect to the claimed subject matter. MPEP §2141.01(a). In this regard, Young is in no way directed to the problem with which Applicant was faced, i.e., flicker filtering. In fact, Young nowhere even mentions the presence or use of such flicker filtering. Instead Young is directed to graphical display and generation of an image from multiple color samples, not separate video and graphics signals, as recited by claim 1.

Nor is there any motivation to combine the teaching of Vos, which is directed to on screen displays for a television, with the computer graphics system of Young. In this regard, the Examiner contends that it somehow would have been obvious "to modify Vos's flicker correction... to adapt Young's alpha test unit... because the use of alpha test unit helps function a blending process..." Final Office Action, p. 5. However, this contention fails, as the Examiner fails to point to any motivation or suggestion with regard to either the claimed alpha value or adjustment of a flicker filter. As such, the Examiner engages in nothing more than improper hindsight rationale in an attempt to combine the references. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1316-17 (Fed Cir. 2000).

The rejection of claim 2 is further erroneous, as Young does not teach or suggest comparing an alpha value to a threshold value. In this regard, Young does not teach or suggest an alpha value that "indicates how a video signal and a graphics signal are to be combined" as


recited by claim 1. Instead, the alpha value of Young relates solely to graphics images and the blending of two graphics pixels as a foreground and background pixel. Young, 1:22-52. Further, the alleged comparison in Young of an alpha value to a threshold is not used in any manner to adjust a filter level of a flicker filter. Instead, Young merely teaches that such a comparison is performed to determine whether to reject a pixel without further processing. Young, 5:10-22.

Even if, as the Examiner contends, "alpha test unit (306) which compares the alpha value of a pixel to a threshold and outputs the result to 'Z compare unit' which in turn transfers its own output to alpha blending unit (310). ..." (Final Office Action, p. 5), this nowhere teaches adjustment of a flicker filter, and it certainly does not teach or suggest adjustment of a filter level of such a flicker filter in response to a comparison result. For this further reason that neither reference anywhere teaches or suggests adjustment of a flicker filter, nor such adjustment by adjusting a level of a flicker filter, the rejection of dependent claims 2-8, 12, 15, and 18-22 is clearly erroneous. Additional dependent claims are further patentable as described more fully in Applicant's Reply, pp. 4-5.

Since the rejection clearly violates existing PTO policy, the need for an appeal should be avoided.

Respectfully submitted,

Date: March 28, 2006



Mark J. Rozman
Registration No. 42,117
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Suite 100
Houston, Texas 77024-1805
(512) 418-9944 [Phone]
(713) 468-8883 [Fax]
Customer No.: 21906